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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

EDMOND PAUL PRICE,

Defendant and Appellant.

2d Crim. No. B230268
(Super. Ct. No. F442939)
(San Luis Obispo County)

A jury found Edmond Paul Price guilty of seven counts of check forgery or counterfeiting. (Pen. Code, § 470, subd. (d).)¹ The jury also found true that Price committed felonies while on bail. (Former § 12022.1, repealed by Stats. 2010, ch. 711, § 4, eff. Jan. 1, 2012.) Price admitted a prior conviction within the meaning of the Three Strikes law (§§ 667, subds. (d) & (e), 1170.12, subds. (b) & (c)), and that he served three prior prison terms (§ 667.5, subd. (b)).

We modify the judgment as to restitution, court security and facilities fees and conduct credits. In all other respects, we affirm.

¹ All statutory references are to the Penal Code unless otherwise stated.

FACTS

South County Checks

Deborah Love was executive director of the South County Family Educational and Cultural Center (South County). Only she was authorized to write checks on South County's accounts. Love did not know Price and did not authorize any checks payable to him. On November 30, 2009, Love was notified that some South County checks had been stolen during a burglary.

The Pocketbook Market had a check cashing service. On December 18, 2009, the market cashed a South County check for Price in the amount of \$1,080.57. Later that afternoon, an employee of the market learned the check contained a nonexistent address. On January 14, 2010, Price returned to the market and tried to cash two more South County checks. The employee took the checks, told Price they were forged, and called the police. Price left the market.

The Carniceria La Meza Market also had a check cashing service. In early January 2010, Price cashed four South County checks at the market. The amounts ranged from \$538.17 to \$981.19. Market employees later learned the checks were not good. On January 14, 2010, Price returned to the market and tried to cash two more South County checks. He was told to return the next day. When Price returned the next day, the police arrested him. The police advised him of his rights pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436, and Price agreed to talk. Price admitted to the police that he received the checks from someone he should not have been involved with, and that the checks were "criminal in nature." Price said, "If you keep up this type of activity, eventually you will be arrested." Price did not want to talk further.

Rovenstine Roofing Checks

While out on bail, on June 21, 2010, Price deposited a check at a Coast National Bank branch and received \$300 in cash back. The check was drawn on the account of Rovenstine Roofing. A day later, the teller who deposited the check learned it was fraudulent.

On June 22, 2010, Price deposited another check drawn on Rovenstine Roofing's account at a different branch of Coast National Bank. He received \$747 in cash back. A bank employee knew the owner of Rovenstine Roofing. She noticed the signature on the check was not that of the owner. She called the owner and verified that the check was fraudulent.

On the same day, Price attempted to deposit another Rovenstine Roofing check at another branch of the same bank. He wanted to receive the majority of the money in cash back. A bank employee was aware of what had been happening at other branches. A bank supervisor called the police and Price was arrested.

DEFENSE

Michael Fleming was released from prison on May 15, 2010. Shortly thereafter Price loaned Fleming \$5,000. About a month later, Price told Fleming he needed the loan repaid. Fleming gave Price three forged checks bearing the name Rovenstine Roofing for \$947.63 each. Fleming got the name Rovenstine Roofing from the telephone book, but he told Price he worked for the company. Fleming did not tell Price the checks were forged. Price asked Fleming, "Are [the checks] going to clear?" Fleming replied, "Yes, they are going to clear. They have a correct account number."

Fleming testified the \$5,000 loan was not for an illegal purpose. He and his wife have a daughter, and his wife was pregnant with their son. They were living in a hotel. He needed the loan to improve their living situation.

DISCUSSION

I

Price contends the trial court erred when it instructed the jury that a mistake of fact must be reasonable in order to constitute a defense.²

² The court instructed in part: "If you find the defendant believed that he had a right to cash the checks at issue . . . and if you find that belief was reasonable, he did not have the specific intent required for the crimes." (CALCRIM No. 3406.)

The People concede that because Price was charged with specific intent crimes, the mistake of fact need not be reasonable. (*People v. Scott* (1983) 146 Cal.App.3d 823, 831-832.) Thus the trial court erred in instructing the jury.

Nevertheless, we agree with the People that the error was harmless by any standard. Here Price passed numerous checks written on the accounts of businesses with which he had no discernable connection. When he was arrested for attempting to pass South County checks, he did not express outrage or even surprise. Instead, he admitted the checks were "criminal in nature," and told the police, "If you keep up this type of activity, eventually you will be arrested." Most telling is that even after Price was arrested for passing forged checks, he continued to pass forged checks. No juror would conclude that Price may have believed any of the checks were valid.

II

Price contends the trial court deprived him of his right to present a defense when it refused to reopen the trial to allow him to testify.

After closing arguments, the following colloquy took place:

"[The Court:] [A]t some point-- I think it was after [the prosecutor] had begun his argument, or maybe he finished his opening; I am not sure-- [Defense counsel] advised [the prosecutor] and I in the hallway, out of the presence of the jury, that Mr. Price wanted to testify and/or argue his own case. So, [defense counsel], you may give us those facts.

"[Defense counsel:] Well, Your Honor, once [the prosecutor] began his closing argument, Mr. Price indicated to me that he didn't understand that the defense case had rested and there would not be any other testimonial evidence introduced at this point. He expressed the fact that he had formed an intent to testify that had not previously been there; it was not our trial strategy, but he had definitely formed that intent, and I guess I didn't hear him or wasn't aware that he had formed the intent that he did want to offer testimony, and I rested our case and the People began their closing arguments."

The trial court denied Price's request to reopen his case to allow him to testify, finding the request was untimely. The court also denied Price's motion for a new trial. During argument on Price's motion for a new trial, Price told the court he wanted to testify to explain why he would loan Fleming \$5,000. Price said he wanted to tell the jury that his daughter was born while he was in prison, and he did not want to see the same thing happen to Fleming.

We must consider four factors in determining whether the trial court abused its discretion in denying a motion to reopen the trial: (1) the stage of the proceedings, (2) the defendant's diligence, (3) the risk the jury would give the new evidence undue emphasis, and (4) the significance of the new evidence. (*People v. Jones* (2003) 30 Cal.4th 1084, 1110.)

Here Price did not request that the proceedings be reopened until after the prosecutor had begun his closing argument. Price was not diligent. His request came after his counsel had announced he would offer no further evidence. Nor was the evidence Price proposed to offer particularly significant. Fleming testified the loan was made for a legitimate purpose. He needed the money to improve his family's living situation. Price's proffered testimony would only confirm Fleming's uncontradicted testimony as to the legitimacy of the loan. Moreover, the material issue in the case was not whether the loan was for legitimate purposes; it was whether Price knew the checks were forged. As to Price's knowledge, the evidence was overwhelming.

The trial court did not abuse its discretion in denying Price's motion to reopen the trial.

III

The People concede the trial court erred in ordering Price to pay restitution on dismissed counts.

The trial court dismissed counts 2, 7 and 8. Count 2 related to the Pocketbook Market. The court awarded \$1,089.57 restitution to the Pocketbook Market. The People concede no restitution is owing to the market.

The trial court also awarded \$3,285.84 in restitution to La Placita Market. That order was based on counts 7, 8, 10 and 11. But the business that cashed the fraudulent checks was called the Carniceria La Meza Market, a separate business located within La Placita Market. The restitution should have been ordered to be paid to Carniceria La Meza Market, not La Placita Market, and only based on counts 10 and 11. The correct amount of restitution to Carniceria La Meza Market is \$1,842.50.

IV

The People point out the trial court failed to impose mandatory court security fees pursuant to section 1465.8 and court facilities assessment fees pursuant to Government Code section 70373.

The security fee is \$30 for each offense and the facilities assessment fee is also \$30 for each offense. Price was convicted of seven offenses, for a total of \$210 for the security fee and \$210 for the facilities assessment fee. These mandatory fees may be imposed on appeal. (*People v. Woods* (2010) 191 Cal.App.4th 269, 272-273.)

V

The People point out the trial court erred in calculating Price's conduct credits.

The trial court awarded Price 170 days presentence credit for time actually served and an additional 170 days conduct credit pursuant to section 4019.

The People argue that Price's conduct credits were calculated under the version of section 4019 that was effective between January 25, 2010, and September 28, 2010. (Stats. 2009. 3d Ex. Sess. 2009-2010, ch. 28, § 50.) Under that version of section 4019, most defendants received day-for-day conduct credits. But defendants who had a prior conviction for a serious felony received only six days for every four days actually served. (Former § 4019, subds. (b), (c) & (f).) The People point out that Price admitted to a prior conviction for a serious felony, residential burglary.

The People are correct. It was error for the trial court to award Price 170 days conduct credit. Price is entitled to only 85 days conduct credit.

VI

Price submits a supplemental brief in propria persona. We have considered his contentions. They have no merit.

The judgment is modified as follows: Price is ordered to pay \$1,842.50 in restitution to Carniceria La Meza Market. No restitution is ordered for Pocketbook Market or La Placita Market. A \$210 court security fee is imposed pursuant to section 1465.8, and a \$210 court facilities assessment fee is imposed pursuant to Government Code section 70373. Conduct credit awarded pursuant to section 4019 is reduced from 170 days to 85 days. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Barry T. LaBarbera, Judge
Superior Court County of San Luis Obispo

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Defendant and Appellant.

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